APPEAL NO. 92106
FILED MARCH 2, 1995

On February 24, 1992 a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. He determined that the claimant was not injured in the course and scope of his employment and was not entitled to benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., arts.8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). The claimant finds fault with several findings of fact and conclusions of law entered by the hearing officer and asks that we reverse his decision and render a new one awarding benefits. In the alternative, the claimant asks that we reverse and remand for a second contested case hearing.

DECISION

Finding the evidence sufficient to support the findings, conclusions and decision of the hearing officer, we affirm.

The claimant worked for the employer, a self-insured entity, on (date of injury), when he claims that he sustained an on-the-job injury. He testified he worked as a dishwasher, and on the day in question he slipped and fell on a wet floor which resulted in him hitting his back and head. Since his shift was ending and he wasn't due back on the job for two hours, he clocked out and walked around the campus. No one saw him fall and he didn't report the matter to anyone although a supervisor was close by. He stated he didn't want to lose his job. He apparently didn't feel any significant pain until his head started aching as he was walking around. According to the claimant, he spotted someone and asked them for some Tylenol. That person advised him he should go to the emergency room when the claimant told him what had happened. He walked some distance to a hospital where he was examined. Although no medical records were introduced, the claimant stated he was advised that he had a "closed head injury." The claimant testified he experienced dizziness, slurred speech, loss of memory and headaches. He still has headaches most of the time.

The claimant states that he called his supervisor from the hospital emergency room to report his injury and to say he would not be back to work. He was advised to come in to report the injury which he did later that night. He was told to come back the following Monday.

The claimant's supervisor testified that she was within eight feet of the dishwashing area at the time of the alleged incident. She stated the claimant approached her and asked why some people were leaving. She explained the different shifts and the claimant said he was going to leave and return at 4 p.m. She saw him enter the dishwashing area and within moments saw him come out and walk right past her. He was not wet, did not appear injured, did not exhibit physical symptoms of injury or slur his speech when he left. She did not hear any noise to indicate anyone had fallen. When the claimant called her from the

hospital at about 4:15 she advised him to come in and make out an injury report. He attempted to make the injury report later that night as she was leaving and she told him to come in on Monday.

A coworker testified that he was at work at the same time as the claimant but did not see him fall or see any physical evidence of a fall or any injury. He walked out with the claimant at 2:00 and engaged in a casual conversation with him. The claimant did not mention that he had fallen or been injured. The following week the claimant asked him to lie and state that he knew the claimant had fallen. The coworker told the claimant he could not do that.

The findings and conclusions that the claimant takes issue with are:

**FINDINGS OF FACT**

4.On (date of injury), the [claimant] did not slip and fall in the dishwashing area while working for the employer.

5.The [claimant] did not injure his head at work.

**CONCLUSIONS OF LAW**

3.The [claimant] was not injured in the course and scope of his employment on September 24, 1991.

4.The [employer] is not liable for any workers' compensation benefits to the [claimant].

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given it. Article 8308-6.34(e), 1989 Act. The claimant's testimony was the only evidence offered to support the claimed injury. While this is enough if believed by the finder of fact (Texas Employers' Insurance Association v. Thompson, 610 S.W.2d 208 (Tex.Civ. App.-Houston 1981, no writ)), the testimony of an interested party such as a claimant only raises an issue of fact. Escamilla v. Liberty Mutual Insurance Co. 499 S.W.2d 758 (Tex.Civ.App.-Amarillo 1973, no writ). As the finder of fact, the hearing officer resolves conflicts in and between the testimony before him as well as other evidence. *See* Cobb v. Dunlop 656 S.W.2d 550 (Tex. Civ. App.-Corpus Christi 1983, writ ref'd n.r.e.); Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Here, there was sufficient evidence upon which the hearing officer could reasonably base his findings, conclusions and decision and for him to accord less than full or total credibility to the claimant's testimony. *See* Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992; Texas Workers' Compensation Commission Appeal No. 91102, decided January 22, 1992.

The decision is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Philip F. O'Neill
Appeals Judge